

Hon. Franklin D. Burgess

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GIFFORD PINCHOT TASK FORCE;
NORTHWEST ECOSYSTEM ALLIANCE;
PACIFIC CREST BIODIVERSITY PROJECT,
Washington non-profit organizations; and,
CASCADIA WILDLANDS PROJECT;
NORTHWEST ENVIRONMENTAL
DEFENSE CENTER; OREGON NATURAL
RESOURCES COUNCIL FUND; AMERICAN
LANDS ALLIANCE; BARK; KLAMATH-
SISKIYOU WILDLANDS CENTER, Oregon
non-profit organizations,

Plaintiffs,

vs.

UNITED STATES FISH AND WILDLIFE
SERVICE,

Defendant

AMERICAN FOREST RESOURCES
COUNCIL,

Defendant-Intervenor.

Case No.: C00-5462-FDB

STIPULATION AND ORDER TO SETTLE
ATTORNEYS' FEES AND COSTS AND TO
DISMISS

WHEREAS, Plaintiffs, Gifford Pinchot Task Force, Northwest Ecosystem Alliance,
Pacific Crest Biodiversity Project, Cascadia Wildlands Project, Northwest Environmental Defense
Center, Oregon Natural Resources Council Fund, American Lands Alliance, Bark, and Klamath-
Siskiyou Wildlands Center, commenced this action against the United States Fish and Wildlife

1 Service ("FWS") challenging approximately 119 biological opinions as arbitrary capricious and
2 not in accordance with the Endangered Species Act (ESA);

3 WHEREAS, the Ninth Circuit issued its opinion and order on all legal claims with respect
4 to six of the biological opinions for which FWS had produced administrative records and for
5 which the District Court had entered final judgment pursuant to Fed. R. Civ. P. 54(b);
6 WHEREAS, pursuant to and in accordance with the Opinion issued by the United States Court
7 of Appeals for the Ninth Circuit in Gifford Pinchot Task Force v. U.S. Fish & Wildlife Svc., 378
8 F.3d 1059 (9th Cir. 2004) and pursuant to the Decree of the Court issued February 7, 2005, this
9 Court granted summary judgment to Plaintiffs on the Northern Spotted Owl (NSO) critical habitat
10 inquiry with respect to the six biological opinions, and granted summary judgment to the Federal
11 Defendants on claims related to the jeopardy analysis for the NSO;

12 WHEREAS, FWS submitted a Notice regarding the Status of Biological Opinions on
13 January 14, 2005 and submitted a Second Notice regarding the Status of Biological Opinions on
14 March 4, 2005;

15 WHEREAS, Plaintiffs and FWS have discussed the status of the remaining biological
16 opinions and projects within NSO critical habitat that these biological opinions authorize;

17 WHEREAS, the Parties have reached an agreement to resolve Plaintiffs' claim for
18 attorney's fees and costs in this matter; and

19 WHEREAS, the parties enter this Stipulation without any admission of fact or law, or
20 waiver of any claims or defenses, whether factual or legal.

21 NOW, THEREFORE, the Parties Stipulate and Agree as follows:

22 1. The Parties agree that to the extent the biological opinions at issue in this action, listed
23 in Exhibit B to the First Amended Complaint, contain a determination that NSO critical habitat
24 would not be destroyed or adversely modified, such biological opinions no longer cover projects
25 likely to adversely affect NSO critical habitat because one or more of the following have
26 occurred: the action agency has completed the project likely to adversely affect NSO critical

1 habitat; the action agency has withdrawn the project likely to adversely affect NSO critical habitat;
2 the biological opinions have been superceded by more recent biological opinions with respect to
3 NSO critical habitat; FWS has reinitiated consultation on the projects likely to adversely affect
4 NSO critical habitat; or projects likely to adversely affect NSO critical habitat will be covered by
5 future biological opinions.

6 2. As a result, Plaintiffs agree to dismiss with prejudice their claims against the remaining
7 biological opinions at issue in this case, listed in Exhibit B to the First Amended Complaint.

8 3. The Parties agree that this Agreement is without prejudice to any of the Plaintiffs'
9 rights to challenge any biological opinion that is not listed in Exhibit B to the First Amended
10 Complaint.

11 4. The Parties agree that this action and this Agreement do not involve issues or claims
12 against individual project decisions issued by federal agencies, even though such individual
13 projects may or may not be the subject of consultation in the biological opinions listed in Exhibit
14 B to the First Amended Complaint.

15 5. The Parties agree to settle all of Plaintiffs' claims for attorneys' fees and costs related
16 to this matter in District Court for a total of \$141,180.00 according to the schedule contained in
17 paragraph 7. Payment will be made in favor of PEAC Client Trust, in accordance with a
18 completed OMB form 1510 submitted by counsel for Plaintiffs to the FWS.

19 6. Counsel for Plaintiffs agrees to submit all necessary paperwork to the FWS within ten
20 (10) business days of receipt of a date-stamped copy of this Agreement.

21 7. FWS agrees to request payment in the amount of \$91,180.00 no later than 30 days
22 from receipt of all necessary paperwork from Plaintiffs. FWS agrees to request payment of the
23 remaining \$50,000.00 on October 2, 2006, unless such action would violate the requirements of
24 the Anti-Deficiency Act.

25 8. Plaintiffs agree to accept payment of \$141,180.00 in full satisfaction of any and all
26 claims for attorneys' fees and costs of litigation incurred for work in the District Court in this

1 matter. Plaintiffs agree that receipt of this payment from FWS shall operate as a release of
2 Plaintiffs' claim for those attorneys' fees and costs.

3 9. By this agreement, FWS does not waive any right to contest fees claimed by any of the
4 Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any other future litigation.

5
6 Respectfully submitted and presented this 9th day of March, 2006,

7
8 /s/ Stephanie M. Parent
9 STEPHANIE M. PARENT (OSB # 92590)
10 Pacific Environmental Advocacy Center
11 10015 S.W. Terwilliger Boulevard
12 Portland, OR 97219
13 (503) 768-6736
14 (503) 768-6642 [FAX]

/s/ Jean Williams for Keith Rizzardi
KEITH RIZZARDI
United States Department of Justice
Ben Franklin Station
P.O. Box 7369
Washington, D.C. 20044-7369
Telephone: (202) 305-0202

15 DAVID S. MANN (WSB #21068)
16 Gendler & Mann, LLP
17 1424 Fourth Ave., Suite 1015
18 Seattle, WA 98101
19 (206) 621-8868
20 (206) 621-0512 [FAX]


BRIAN KIPNIS
Assistant United States Attorney
United States Attorneys Office
Suite 5100
601 Union St.
Seattle, WA 98104-3109

21 Counsel for Plaintiffs

Counsel for Defendant

22 IT IS SO ORDERED.

23 Dated this 10th day of December, 2005

24 
FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE